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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIMIKO KIMIO WILSON,

Petitioner,

vs.

ANTHONY HEDGEPEETH, Warden,

Respondent.

No. C 11-0185 WHA (PR)

**ORDER DENYING MOTION TO
REOPEN**

(Docket Nos. 2, 3, 5, 6)

Petitioner, a California prisoner proceeding pro se, filed this petition for a writ of habeas corpus under 28 U.S.C. 2254. The petition was dismissed without prejudice because Petitioner indicated that when he filed the petition he had a habeas petition pending in the state superior court (Pet. 5). *See Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983) (habeas exhaustion requirement is not satisfied if there is a pending proceeding in state court). Petitioner has filed a motion to reopen this case because the state superior court proceedings have since ended. The appropriate time to assess whether a prisoner has exhausted his state remedies is when the federal petition is filed, not when it comes on for hearing federal court. *Gatlin v. Madding*, 189 F.3d 882, 889 (9th Cir. 1999); *Brown v. Maass*, 11 F.3d 914, 915 (9th Cir. 1993). Where, as here, the petitioner exhausts after filing, he can bring that up in a subsequent petition, *Gatlin*, 189 F.3d at 889. Petitioner may file a new federal petition in a new case, but his motion to reopen this case (docket number 11) is **DENIED**.

IT IS SO ORDERED.

Dated: March 14, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KIMIKO KIMIO WILSON,
Plaintiff,

Case Number: CV11-00185 WHA
CERTIFICATE OF SERVICE

v.

ANTHONY HEDGPETH et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 14, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kimiko Kimio Wilson F-84721
P.O. Box 1050
Soledad, CA 93960

Dated: March 14, 2011

Richard W. Wieking, Clerk

By: ~~Brenda Forbert~~, Deputy Clerk